IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

TUESDAY, THE 28TH NOVEMBER 2006 / 7TH AGRAHAYANA 1928

OP.No. 12806 of 2003(Y)

PETITIONER:

BEENA ANTONY, W/O. V.P. JOHN,
AGED 39 YEARS, HIGH SCHOOL ASSISTANT,
HOLY ANGLES I.S.C. SCHOOL, NANTHANCODE,
TRIVANDRUM.

BY ADV. SRI.V.A.MUHAMMED
SRI.K.E.HAMZA

RESPONDENTS:
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1. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, SECRETARIAT,
TRIVANDRUM.

2. THE DEPUTY DIRECTOR OF EDUCATION,
TRIVANDRUM.

3. THE MANAGER,
HOLY ANGLES I.S.C. SCHOOL, NANTHANCODE,
TRIVANDRUM.

4. THE PRINCIPAL,
HOLY ANGLES I.S.C. SCHOOL, NANTHANCODE,
TRIVANDRUM.

R1 & R2 BY G.P. SMT. BINDU
R3 & R4 BY ADV. SRI.V.N.ACHUTHA KURUP

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 28/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT.P1-TRUE COPY OF THE GO DATED 12.3.2003

EXT.P2-TRUE COPY OF THE ORDER OF R3 DATED 25.3.2003

EXT.P3-TRUE COPY OF REVIEW PETITION SUBMITTED BEFORE R1 DATED 27.3.2003

EXT.P4-TRUE COPY OF JUDGMENT REPORTED IN ILR 2004 (1) KER. 168

EXT.P5-TRUE COPY OF JUDGMENT REPORTED IN 2004 (3) KLT 149

// TRUE COPY //

A. K. Basheer, J.

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O.P.No. 12806 Of 2003-y

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Dated this the 28th day of November, 2006.

JUDGMENT

Is the action of the Manager in terminating the service of the petitioner as Primary Teacher legally valid and sustainable? A brief reference to the essential facts is necessary to consider the above question.

2. Petitioner was admittedly working in an unaided recognised school under the management of respondent No.3. On March 25, 2003, petitioner was served with Ext.P2 order informing her that she had been relieved of her duties from the school since her conduct was found to be far from satisfactory. Petitioner prays for issuance of a writ of certiorari to quash Ext.P2 order. There is a further prayer for issuance of a writ of mandamus or such other appropriate writ or direction to respondent No.1 to consider and pass appropriate orders on Ext.P3 after affording opportunity to her to be heard.

3. Having heard learned counsel for the petitioner and learned counsel for respondents 3 and 4, I am satisfied that Ext.P2 order is liable to be quashed for reasons more than one. It is the admitted position that the management had not issued any show cause notice to the petitioner before issuing Ext.P2 order of termination. Further, no enquiry was conducted and petitioner was not afforded any opportunity to be heard before the drastic action was taken against her. If in fact the management had found that the conduct of the petitioner was far from

satisfactory, she ought to have been put on notice. A memo of charges ought to have been served on her if the management felt that she was guilty of any misconduct. In the above facts and circumstances, I have no hesitation to hold that the action of the management is totally vitiated, illegal and arbitrary.

4. Therefore, Ext.P2 is quashed. It will be open to the management to proceed against the petitioner, if so advised, in accordance with law. Such action shall be taken only after issuing a notice to the petitioner and serving her a memo of charges. Necessarily, petitioner should be afforded opportunity to defend herself if an enquiry is instituted against her. The proceedings, if any, shall be completed by respondent No.3 as expeditiously as possible, at any rate, within three months from the date of receipt of a copy of this judgment.

The writ petition is disposed of in the above terms.

(A.K. Basheer)
Judge.

Kav/

A.K. BASHEER, J.

O.P.NO.12806 OF 2003-Y

JUDGMENT

28TH NOVEMBER, 2006.